IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

L.M., PARENT AND EDUCATIONAL DECISION MAKER FOR Q.G., AND Q.G.	:	CIVIL ACTION
v.	:	
LOWER MERION SCHOOL DISTRICT	:	NO. 10-4855

MEMORANDUM

Bartle, C.J. January 7, 2011

Plaintiff L.M. and her daughter Q.G. bring this action against the Lower Merion School District ("School District") for violation of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq*. Before the court is the motion of the School District to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure or for failure to state a claim under Rule 12(b)(6).

I.

When reviewing a facial challenge to subject-matter jurisdiction under Rule 12(b)(1), the court accepts the plaintiff's allegations as correct and draws inferences in the plaintiff's favor. Turicentro, S.A. v. Am. Airlines, Inc., 303 F.3d 293, 300 & n.4 (3d Cir. 2002); Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977). A facial challenge to subject-matter jurisdiction is one in which a

defendant argues that "the allegations on the face of the complaint, taken as true," are insufficient to invoke the court's jurisdiction. Turicentro, 303 F.3d at 300.

Similarly, when deciding a Rule 12(b)(6) motion to dismiss, the court must accept as true all factual allegations in the complaint and draw all inferences in the light most favorable to the plaintiff. Phillips v. Cnty. of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008); Umland v. Planco Fin. Servs., Inc., 542 F.3d 59, 64 (3d Cir. 2008). We must then determine whether the pleading at issue "contain[s] sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim must do more than raise a "'mere possibility of misconduct.'" Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009) (quoting Iqbal, 129 S. Ct. at 1950). Under this standard, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 129 S. Ct. at 1949. On a motion to dismiss, a court may consider "allegations contained in the complaint, exhibits attached to the complaint and matters of public record." Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) (citing 5A Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 299 (2d ed. 1990)).

II.

The following facts are undisputed or taken in the light most favorable to the plaintiff. Q.G. is an eighteen year old African American graduate of Lower Merion High School. While attending school, Q.G. was identified as a student who had a specific learning disability in math and reading comprehension. She received special education services throughout her school career through an Individual Education Plan ("IEP").

In May 2009, Q.G. instituted a request for a due process hearing against the School District to resolve a dispute regarding whether Q.G. had been denied a free appropriate public education ("FAPE") under the IDEA. Several months later, L.M. signed a settlement agreement on behalf of Q.G., who was then a minor. This settlement agreement released the School District from liability for any and all special education claims arising before the start of the 2009-2010 school year. The settlement agreement created an educational fund of $49,475 which Q.G. could use until the end of the 2011-2012 school year, when she would turn twenty-one. The fund was to be used for "any appropriate educational and/or remedial program, tutoring, instruction, lesson, course, or service that assists Q.G. in furtherance of her past, present and/or future academic and transition IEP goals limited to college entrance exam preparation courses, transition services, reading instruction, math instruction, or neuropsychological evaluation."

After graduation from high school, Q.G. enrolled at Immaculata University. During the 2009-2010 school year, a dispute arose concerning the ability of Q.G. to access the fund to pay for college expenses, including tuition, room and board, tutoring, books, and materials. Q.G. filed a special education due process complaint against the School District, alleging that: (1) she was denied a FAPE for the 2009-2010 school year; (2) the School District violated the settlement agreement by not making the fund available for college expenses; and (3) the School District discriminated against her on the basis of race.

A hearing officer dismissed Q.G.'s complaint. Specifically, the hearing officer concluded that Q.G.'s claim regarding the denial of a FAPE in 2009-2010 was insufficiently pleaded. The hearing officer also found that she lacked jurisdiction to consider Q.G.'s claim regarding the settlement agreement dispute and her allegation of racial discrimination.

Q.G. then filed her complaint in this court. Q.G. seeks to require the School District to permit her to use the settlement fund for college expenses or, in the alternative, that we remand the case for additional proceedings before another hearing officer. She also requests a reversal of the hearing officer's decision dismissing her claim of racial discrimination. The School District concedes that Q.G. has exhausted her administrative remedies with respect to these two claims. In her complaint, Q.G. also challenged the hearing officer's dismissal of her claim regarding the denial of a FAPE for the 2009-2010

school year as insufficiently pleaded. However, in her memorandum of law in opposition to the School District's motion to dismiss, Q.G. states that she does not challenge this decision. Therefore, we will not address this claim.

III.

The School District first maintains that this court lacks subject matter jurisdiction to interpret and enforce the settlement agreement. "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (internal citations omitted). The burden of establishing jurisdiction rests with the plaintiff. Id. Generally, "enforcement of [a] settlement agreement is for state courts, unless there is some independent basis for federal jurisdiction." Id. at 381-82; see also Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 604 n.7 (2001). A district court may only retain jurisdiction over enforcement of a settlement agreement by issuing an order of dismissal that (1) explicitly states that the court will retain jurisdiction over enforcement of the settlement agreement; or (2) incorporates the terms of the settlement agreement. In re Phar-Mor, Inc. Sec. Litig., 172 F.3d 270, 274 (3d Cir. 1999) (citing Kokkonen, 511 U.S. at 381-82).

Here, Q.G.'s claim is essentially a contract dispute. See Flemming v. Air Sunshine, 311 F.3d 282, 289 (3d 2002);

Halderman v. Pennhurst State Sch. & Hosp., 901 F.2d 311, 317-18 (3d Cir. 1990). The parties are not of diverse citizenship as both are citizens of Pennsylvania. Q.G. has not alleged that there was an order of dismissal under which the court retained jurisdiction over the settlement. Therefore, this court may only entertain this action if there is some other independent federal statutory or constitutional basis for jurisdiction.

Under the IDEA, a settlement agreement may be enforced in a district court of the United States only if it was reached through a mediation process or resolution session. The statute states that:

> In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that . . . is enforceable in any State court of competent jurisdiction or in a district court of the United States.
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> . . . . .
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> In the case that a resolution is reached to resolve the complaint at a [resolution session], the parties shall execute a legally binding agreement that is . . . enforceable in any State court of competent jurisdiction or in a district court of the United States.

20 U.S.C. §§ 1415(e)(2)(F)(iii); 1415(f)(1)(B)(iii); see also D.R. v. East Brunswick Bd. of Educ., 109 F.3d 897, 900-02 (3d Cir. 1997). Many courts, including several cited by Q.G., have held that a settlement agreement related to an IDEA claim which is reached outside the formal mediation or resolution process is not enforceable under the IDEA in a district court of the United

States. See, e.g., H.C. v. Colton-Pierrepont Cent. Sch. Dist., No. 08-4221, 2009 WL 2144016, at *2 (2d Cir. July 20, 2009); T.D. v. LaGrange Sch. Dist. No. 102, 349 F.3d 469, 479 (7th Cir. 2003); J.M.C. v. La. Bd. of Elementary & Secondary Educ., 584 F. Supp. 2d 894, 897 (M.D. La. 2008); Traverse Bay Area Intermediate Sch. Dist. v. Mich. Dep't of Educ., No. 06-139, 2007 WL 2219352, at *6-7 (W.D. Mich. July 27, 2007); Bowman v. District of Columbia, No. 05-01933, 2006 WL 2221703, at *2 (D.D.C. Aug. 2, 2006).

Q.G. has not alleged that the settlement agreement in question was reached during a mediation session or formal resolution process, as contemplated by the IDEA. Thus, the IDEA provides no basis for resolving the pending contractual dispute. Since diversity of citizenship is lacking and no federal court retained jurisdiction over the settlement, the claims of Q.G. related to the settlement agreement will be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1).

Q.G., as noted above, also pleads that the hearing officer improperly dismissed her claim of racial discrimination for lack of subject matter jurisdiction without a hearing. However, Q.G. does not state in her complaint here or before the hearing officer any specifics about the racial discrimination that she allegedly suffered. See Iqbal, 129 S. Ct. at 1949; Twombly, 550 U.S. at 555-56.

The purpose of the IDEA is to place an affirmative duty on states to provide a free appropriate public education to

students with disabilities. 20 U.S.C. § 1400(d)(1)(A) (2010). Therefore, the "IDEA provides relief from inappropriate educational placement decisions, regardless of discrimination." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 901 (D.N.J. 2003) (citing J.D. v. Pawlet Sch. Dist., 224 F.3d 60, 70 (2d Cir. 2000); Sellers v. Sch. Bd. of Manassas, 141 F.3d 524, 528-29 (4th Cir. 1998); A.W. v. Marlborough Co., 25 F. Supp. 2d 27, 31 (D. Conn. 1998)). The Pennsylvania Department of Education's Office for Dispute Resolution has promulgated regulations stating that "[h]earings for claims regarding discrimination against a student based on any factor other than handicap, including, but not limited to, race, religion, national origin, and gender are not subject to the due process system." Pa. Dep't of Educ., Special Educ. Dispute Manual, § 103(E) (2009), *available at* http://odr-pa.org/wordpress/wp-content/uploads/SEDR_man.pdf. Plaintiffs have cited no authority which recognizes a separate claim for relief under the IDEA for racial discrimination.

We note that Q.G. is a plaintiff in another action, Blunt v. Lower Merion School District. No. 07-3100 (E.D. Pa.). This action is still pending and includes claims by Q.G. for racial discrimination under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. While Q.G. may have other remedies for racial discrimination for the time period in question here, she has not stated a claim for relief under the IDEA.

Accordingly, we are granting the motion of the School District to dismiss the claim for racial discrimination under Rule 12(b)(6).